

IMPLEMENTATION OF ISBAT NIKAH AT GARUT RELIGIOUS COURT

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Abstract

The applications for cases of marriage validation (isbat nikah) at the Religious Court of Garut have been increasing annually. This phenomenon arises due to a prevailing lack of legal awareness among the Garut community regarding the importance of formal registration in solemnizing marriages. This situation persists because the understanding of the validity of marriage is predominantly based on religious rites, with a noticeable absence of administrative recording. In our society, this practice is commonly referred to as "nikah siri" or unofficial marriages. Other reasons for not registering marriages include instances of out-of-wedlock pregnancies, compelling the parties involved to hasten their union, and underage marriages which render formal marriage requirements unattainable. Additionally, there are other factors such as economic, educational, or cultural considerations. Applications for isbat nikah are submitted to ascertain inheritance rights and to regulate cases of marriage that are not documented in the records of the Office of Religious Affairs. When examined from a juridical perspective, marriages recorded solely in religious ceremonies and without state documentation have notable ramifications, with one of the most prominent being the impact on children. The failure to register such marriages leaves the civil rights of wives and children unprotected by the law. The methodology employed is qualitative, utilizing an empirical juridical approach. This composition seeks to scrutinize the implementation of isbat nikah, along with the efforts and challenges encountered in the Religious Court of Garut. The execution of isbat nikah adheres to the procedures stipulated by legal regulations. However, the existing challenge lies in the difficulty of reaching the Garut community due to the extensive geography of Garut regency. Furthermore, there persists a prevalent understanding that the registration of marriage is not a fundamental principle. The endeavors undertaken to resolve isbat nikah cases in the Religious Court of Garut involve conducting mobile isbat nikah hearings and integrated isbat nikah hearings.

Keywords: Implementation, Marriage Isbat and the Religious Court of Garut

INTRODUCTION

Marriage comes from two words, namely *na-ka-ha* or *za-wa-ja* which means marriage, while in the language of marriage this is interpreted as joining, having sex and also interpreted as a covenant. Furthermore, in terms of jurisprudence, it is interpreted as a contract or agreement that contains the intention of allowing sexual relations between a man and a woman. Universally in Islam it means making a contract or agreement to bind oneself between a man and a woman which has the effect of allowing sexual relations on the basis of voluntary and mutual consent for the realization of a happy family and the pleasure of Allah Almighty.¹

In the Marriage Law Number 1 of 1974 concerning Marriage, there it has been mentioned that marriage is an inner birth bond between a man and a woman as husband and wife with the main aim of forming a happy and eternal household (family) based on God and Almighty, in the article not only discusses the definition of marriage but also explains the

purpose of a marriage, namely to form a family who are happy and eternal.²

The purpose of forming a family is also affirmed in Article 3 of the Compilation of Islamic Law (KHI) which states that marriage aims to build a family life that *is sakinah, mawadah and rahmah*. The formulation of the purpose of marriage is also affirmed in QS. Ar-rum verse 21 which means:

"Among the signs of his greatness is that he created for you wives of your own kind, that you might be inclined to be at ease with him, and made among you affectionate, verily in such there is indeed a sign of his greatness for the thinking people".³

Ideal marriage or in Islam is called *sakinah, mawadah and rahmah*, which continues to be related to domestic life starting from the formation of a household then having children, children grow up and continue until it ends in separation death certainly results in several reasons. The occurrence of marriage also results in changing status, there are rights and obligations, there is responsibility for all actions. So it is with the sacred covenant bond that the form of a home is born.

We need to know first that towards the word perfect it always brings up new ideas to solve problems, one of which is to register a marriage. Sometimes we need to realize that in unregistered marriages it always causes problems. Long before getting to know the problem of marriage registration, it is good to know marriage registration in Indonesia.

First, marriages in Indonesia, especially those who are Muslim, can marry and be registered at the Office of Religious Affairs (KUA) which is widely found in various regions, while those who are religious other than Islam usually marry in places that they think are holy and recorded in the civil registry. *Second*, registration is carried out because the marriage is carried out under the hands so it is not recorded in the KUA or in the civil registry.

Then in Law Number 1 of 1974 Article 2 paragraph 1 it is explained that a valid marriage is if it is carried out according to the laws of each religion and belief, which further in paragraph 2 it is explained that marriage is recorded according to applicable laws and regulations. It can be said based on the above provisions that marriage registration is not the main requirement for the validity of marriage, marriage will be considered valid if it has been carried out according to their respective religions and beliefs.⁴ Meanwhile, Article 4 of the Compilation of Islamic Law (KHI) affirms the validity- of this marriage if it is carried out according to Islamic law.⁵

So that it can be understood in Article 2 of the Marriage Law that independently has led to an understanding of the validity of marriage only carried out religiously without the administration of registration, or in our society popular with the term *nikah siri* or marriage under the hand. Marriage under the hands is defined as a marriage contract that is carried out legally by fulfilling the material legal provisions of marriage alone without fulfilling the provisions of the formal law so that the marriage is not recorded and does not get a marriage certificate.⁶ This condition then causes various problems in the future, this condition is caused by the principles held in the midst of society if the conditions and

pillars of marriage have been fulfilled then it is considered sufficient.

This principle is deeply rooted in communities that in fact live in remote areas, but it is also possible that in urban areas such practices are still found. Other reasons for marriage refusal to be recorded are the occurrence of extramarital pregnancies that force the perpetrators to marry as soon as possible, the occurrence of underage marriages so that the conditions of marriage cannot be fulfilled or for other reasons such as economic, educational or cultural factors. This awareness of marriage registration is also apparently still poorly understood by the public, considering that so many perpetrators marry under their hands.

Another reality is found in the Garut Religious Court, the applicant *Isbat nikah* was filed for the determination of heirs and the loss of a marriage certificate (the marriage occurred before the existence of Marriage Law Number 1 of 1974) so that the marriage could not be registered at the Office of Religious Affairs. When examined more deeply from a juridical perspective, marriages that are registered with the state and those that are only registered religiously have an impact and one of the most prominent consequences is the impact on children. The impact of not registering the marriage makes the civil rights of wives and children not protected by law.

Ad a The impact is not without reason, because for those who do not register the N-marriage yes or do not hold a marriage before the Employee Marriage Registration, then automatically at is will bear a juridical risk, namely pThe marriage is categorized as a wild marriage or in our society is familiar with the term *kumpul kebo*.

This is affirmed in Article 6 paragraph (1) of the KHI that every marriage must take place before and under the supervision of the Marriage Registration Officer, and in Article 6 paragraph (2) of the KHI it is also explained that marriages carried out outside the supervision of the Marriage Registration Officer have no legal force.^[7] In Indonesia itself, the majority of the people adhere to Islam which strongly influences the implementation of marriage, where marriage is considered quite valid if it meets the terms and conditions religiously alone without recording. This is quite influential on the implementation of *Isbat Nikah*.

Furthermore, in Law Number 32 of 1954 concerning the Stipulation of the Enactment of Law of the Republic of Indonesia dated November 21, 1946 Number 22 of 1946 concerning Registration of Marriage, Talaq and Reference in All Regions Outside Java and Madura. In addition to the enactment of Law Number 22 of 1946, in Law Number 32 of 1954 there was a change in technical terms in the judiciary, namely the term "police judge whispers" was changed to "Clerk of the District Court".

The key word in Law Number 22 of 1946 related to marriage registration is marriage supervision. The law explicitly stipulates that marriages must be supervised by a Marriage Registration Officer (PPN) appointed by the Minister of Religious Affairs. In addition, talaq and references made based on Islamic law are notified to VAT.⁸

In Law Number 22 of 1946 there is no explicit statement stating that marriages performed are not recorded and supervised by VAT are invalid. However, the law stipulates that "a married person is required to pay a registration fee in the amount determined by the Minister of Religious Affairs".⁹

Furthermore, the phenomenon of underhand marriages and the unrecorded marriages that occur in Garut are partly caused by the high cost of obtaining documents, the distance to the service office, lack of understanding of procedures and the complexity of the process that must be undertaken.

Based on the description above, the author, this study aims to find out the following:

1. How to perform isbat nikah at the Garut Religious Court?
2. Allegations and efforts made by the Garut Religious Court?

This research aims to provide the following benefits:

1. Practically, this paper helps to examine the implementation of isbat nikah along with the obstacles and efforts made by the Garut religious court.
2. Theoretically, this paper provides benefits to examine legal symptoms that arise in the midst of society on the importance of marriage registration law.

RESEARCH METHODS

In this study, the author uses qualitative research methods with an empirical juridical approach. The object of study in this study is the effectiveness of marriage registration rules by the Garut religious court on the community, the obstacles faced and efforts made to resolve problems arising from the non-registration of marriages. The primary data used in this study included sources of information obtained by interviewing.¹⁰ informants such as judges of the Garut Religious Court, Substitute Registrars of the Garut Religious Court, and people who applied for marriage isbat. In addition, a survey was also conducted at the Garut Religious Court. While secondary data in the form of books, journals, laws and articles related to the problem to be studied in this study.

DISCUSSION

Implementation of Isbat Nikah at Garut Religious Court

Isbat nikah comes from Arabic which consists of two words, namely the word isbat and the word nikah. The word isbat itself comes from *the word asbata- yasbitu-isbatan* which means determination or determination. The term was later absorbed into the term word in Indonesian. While the word nikah comes from the word *nakaha* which means to marry each other, thus isbat nikah is the establishment of marriage. Meanwhile, in large dictionaries, Indonesian the word isbat is defined by stipulating, which is in the form of establishing the truth (validity) or establishing the truth of something.¹¹

Then Ahmad Warson Munawwir in the great Arabic-Indonesian dictionary interprets that isbat is as determination, closure, and iyaan.¹² Isbat nikah also has a definition as a determination of the truth (validity) of marriage which automatically means the legalization of a marriage that has been carried out according to Islamic religious law, but is not recorded by the Office of Religious Affairs or the competent VAT.¹³

The view of the classical fukaha regarding isbat nikah is not a necessity because it is explicitly not found in the Qur'an or hadith that requires the recording of a marriage. However, looking at the current conditions, marriage registration is a must because if it is not recorded, a lot of harm will be caused. Islam insists that harm must be avoided, as stated in the rules of jurisprudence which reads *ad- Dararu yuzaalu* which means "harm must be eliminated".¹⁴

Meanwhile, according to the Compilation of Islamic Law (KHI) article 5 paragraph (1) that in order to ensure marriage order for the Islamic community, every marriage must be recorded. With regulations that require the registration of marriages, it is an effort by the government or state to protect and guarantee the fulfillment of the social rights of every citizen, especially married couples and children born from the marriage.

The marriage that has been registered will obtain a marriage certificate which is an authentic certificate that has the function of obtaining legal certainty of a marriage. Although laws and regulations have required a marriage certificate, it is not uncommon to find in our society a married couple who do not have a marriage certificate.

Furthermore, in article 6 paragraph (1) of the Compilation of Islamic Law, it is stated that to fulfill the provisions of article 5, every marriage must take place before and under the supervision of a Marriage Registration Officer. Article 6 paragraph (2) confirms that marriages performed outside the supervision of the Marriage Registration Officer have no legal force. Marriages that do not have the force of law will have a clearly detrimental impact.

Based on this, the Compilation of Islamic Law in Article 7 paragraph (2) provides a solution for married couples who do not have a marriage certificate, can be submitted for their marriage isbat to the religious court so that their marriage has legal force. Automatically, the provision also reinforces the authority of religious courts in cases of proving marriage that do not have a marriage certificate by going through a probate procedure in court. This isbat nikah effort is not only a determination of marriage that occurred before the existence of marriage law number 1 of 1974, but also as an effort to prove and validate marriage.¹⁵

Nowadays, we are increasingly finding marriage perpetrators under the hands and there are many reasons behind this happening and there are also many cases of marriage isbat applications that enter the Garut Religious Court from year to year there has been an increase, throughout 2020 there have been 724 cases of marriage isbat case applications. The following data was successfully summarized by the author based on the results of the recapitulation at the Garut Religious Court.

Case Filing Rate in Garut Religious Court from 2017-2020

Case	2017	2018	2019	2020
Isbat Nikah	250	404	610	724

The data automatically shows an increase in cases of marriage isbat applications submitted to the Garut Religious Court from year to year. So that the data also shows the importance of isbat nikah in marriage in society. Because the only evidence that can prove that a marriage has taken place is the existence of a marriage certificate. The implementation of isbat nikah in the Garut Religious Court is actually the same as the implementation of isbat nikah in various other Religious Courts which distinguishes only the factors and reasons for the applicants for isbat nikah.

Kendala and Efforts Made By the Garut Religious Court

Isbat nikah in principle is part of efforts or steps taken by the government in serving the community within the scope of its competence, the existence of isbat nikah is considered quite important, because for people whose marriages are not recorded, they automatically cannot prove their marriage when a case occurs involving elements of the state, such as in a trial in a court. Although it has been religiously recognized as valid, the only thing that can be used as authentic evidence in court is only with a marriage certificate. For this reason, this isbat nikah has benefits for ordinary people who in fact have a position as a legal subject and of course must be served by other legal subjects, namely the government.

With regard to the above problems, in reality for people or couples who do not have a marriage book will have difficulties when dealing with the law, especially related to civil affairs. This marriage isbat has a very important role in marriage, that is, so that the marriage has legal force and administrative order. This is certainly in line with law number 1 of 1974 and the Compilation of Islamic Law articles 5 to 7 as explained in chapter 2. Still according to him, if later in the marriage there are problems related to the legal realm, it can be proposed for resolution through legal remedies.¹⁶

According to the statement of the Judge of the Garut Religious Court, it can be understood that there are at least several obstacles to the implementation of isbat nikah in the Garut Religious Court, these obstacles are as follows:

a. Access issues to the Garut Religious Court.

The obstacles that hinder the community in conducting isbat nikah case hearings for marriage book management and submitting marriage isbat cases to the Garut Religious Court are access and transportation constraints, due to the long distance between the Garut Religious Court and several sub-districts in Garut regency. As explained by Garut Religious Court Judge Dr. Kamaludin, M.H., to travel to the Garut Religious Court in order to administer isbat nikah, requires considerable costs and long time constraints, considering that this isbat nikah trial cannot be done only once to obtain a court determination. The same statement as expressed by Mrs. Aisah who comes from Cibalong that according to her filing a marriage isbat application is not so easy,

considering the distance traveled to the Garut Religious Court is quite far from where she lives, this makes her reluctant to take care of marriage isbat, but for the sake of managing Taspen funds she finally continued the process of registering her marriage isbat case.
[17]¹⁷

b. Misconception

Most of them think that marrying religiously alone is considered quite legal, because it is in accordance with the pillars and shari'a of Islam. So that marriage registration is not something that is principled and necessary.

c. Lack of understanding and using intermediary services

The procedure for obtaining a legal identity document can be complicated, with applications varying from region to region, and taking a long time. For example, if someone who has not registered his marriage then wants to obtain a child's birth certificate that includes the names of both parents, then he will deal with three agencies, namely the Religious Court to hear marriage legalization cases, the Religious Affairs Office (KUA) or civil registration service to obtain a marriage certificate/book, and the Civil Registration Service to obtain a birth certificate.

It will take several days to obtain one or more legal identity documents. As well as the lack of understanding of the applicable procedures, as well as the costs are relatively not small and of course take a long time so that in the end they choose to use the services of intermediaries, which in the end the community only accepts the order.¹⁸

This is also experienced by the people of Garut in submitting applications for isbat nikah, most of them use advocates, based on interviews with judges, according to him, if the percentage of applicants for isbat nikah who use advocates amounts to 70%.

d. Lack of socialization

There is still a lack of socialization from the government on the importance of recorded marriages and the impact that will be caused if marriages are not recorded.¹⁹

Regarding the efforts made to establish isbat nikah at the Garut Religious Court, there are two solutions proposed by the Garut Religious Court, namely the mobile trial program and the integrated isbat nikah trial. In the implementation of the mobile trial in Garut Regency, this is the result of synergy carried out between the Religious Affairs Office in each sub-district which does have problems with access to the Garut Religious Court and the Garut Religious Court itself. This is in line with what was revealed by the judge of the Garut Religious Court that the holding of this mobile trial program is a legal aid intended for people who have difficulty reaching the Garut Religious Court, in addition to the large number of people who do not have a marriage certificate. In addition, this mobile trial program is carried out in order to help people who lack legal education, especially those who lack education on marriage registration. This program is carried out by traveling by visiting every sub-district in Garut Regency.

The first stage in the mobile trial program for isbat nikah cases is registration. This registration process is carried out by the Sub-District Religious Affairs Office by registering people who do not have a marriage certificate, then the Sub-District Religious Affairs Office provides the data to the Garut Religious Court for follow-up.

The registration of this mobile isbat nikah trial is generally the same as direct isbat marriage registration as coming to the Garut Religious Court. The application in the mobile isbat nikah session is still the person concerned who submits the application, the difference lies in the isbat nikah session which is collective in nature and the financing has been facilitated by the Garut Religious Court in collaboration with the Religious Affairs Office in the sub-district.

The techniques and process stages in the implementation of this mobile trial include examination, evidence, as well as conclusions and determinations.

1. Examination

In the examination of the mobile isbat nikah congregation is actually the same as the isbat nikah congregation in general. Regarding the examination of the case, an oath is first carried out against the couples, followed by connecting the data obtained by asking for the identity of the parties, after which the spouses are given advice, advice and direction as necessary. Then the judge continued to read the letter of application for isbat nikah, the letter had been provided by the Garut Religious Court. In addition, the judge also asked each couple about the implementation of the marriage process that had previously been carried out.²⁰

2. Proof

The next step is evidence, in this stage the judges test and question the evidence that has been submitted, be it in the form of letters, witnesses and guardians. After the evidence was examined and questioned, it was followed by the summoning of witnesses, before giving his testimony this witness was sworn first, after which the panel of judges asked several questions about the events connected with the marriage between the petitioners. In this case, there were two witnesses.

3. Conclusion and determination

After examination and evidence presenting two witnesses, the final step is conclusion and determination. At this stage, the panel of judges came to a conclusion. If the evidence and information are considered perfect and state that a previous marriage has taken place, then the determination of the marriage isbat can be read. This mobile trial was completed on the same day, in the sense that there was no delay in the trial in general. So that when all processes have been passed, then the reading of the determination is immediately read. After obtaining the results of the determination, each couple is directed to sign a marriage certificate, which the head of the KUA is also present at that time.

Meanwhile, related to the integrated isbat nikah trial program, the Garut Religious Court collaborated with the Garut Regency Ministry of Religious Affairs Office, BAZNAZ Garut

Regency in collaboration with the Community Organization of the Nahdatul Ulama Branch of Garut Regency. The Garut Religious Court also cooperates with the Garut Regency Office of Population Control, Family Planning, Women's Empowerment and Child Protection (PPKBPPPA).

The stage of implementing the integrated isbat nikah trial is the same as the stage of the mobile isbat nikah trial, where previously data collection had been carried out on couples who did not have a marriage certificate, then the isbat nikah trial was carried out on a predetermined day and finished on the same day.

CONCLUSION

Related to the implementation of isbat nikah at the Garut Religious Court has been carried out in accordance with the procedures specified in the law, the procedure for filing cases includes registering with the Garut Religious Court, paying case fees, waiting for a summons from the Court, attending trials and court decisions. The obstacles in the implementation of isbat nikah at the Garut Religious Court are the problem of access that is difficult to reach to the Garut Religious Court, especially for people who live in sub-districts that are quite far from the Garut Religious Court, people who adhere to the principle that marriages that have been carried out religiously alone are considered valid enough, as long as they are harmonious and the conditions do not conflict with Islamic religious law, The lack of public understanding of the procedure for filing isbat nikah cases and using intermediary services is also an obstacle in the implementation of isbat nikah at the Garut Religious Court, and the last is the lack of socialization from the government and local officials. Meanwhile, the settlement of marriage isbat application cases at the Garut Religious Court can be done in two ways, namely by conducting mobile marriage isbat sessions and integrated marriage isbat trial programs in collaboration with the government and KUA in Garut Regency.

Footnotes:

- 1) Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam Jilid 3*, (Jakarta: Ikhtiar Baru Vanhove, 1996), hlm 341.
- 2) Pasal 1 Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan
- 3) Abdullah Siddik, *Hukum Perkawinan Islam*, (Jakarta: Tinta Mas Indonesia, 1991), hlm 214.
- 4) Pasal 2 ayat (1) Undang-undang Nomor 1 Tahun 1974 tentang perkawinan
- 5) Pasal 4 Kompilasi hukum islam
- 6) Meita Djohan Oe, Isbat Nikah dalam Hukum Islam dan Perundang-undangan di Indonesia, *Jurnal Pranata Hukum*, Vol. 8 No. 2 (Juli, 2013), hlm 139.
- 7) Pasal 5 ayat (1), (2) Kompilasi hukum islam
- 8) Jaih Mubarak, *Pembaruan Hukum Perkawinan di Indonesia*, (Bandung: Simbiosis Rekatama Media, 2015), hlm 65.
- 9) Jaih Mubarak, *Pembaruan Hukum Perkawinan di Indonesia*, ibid hlm 66.
- 10) Salim HS dan Erles Septiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*,

(Jakarta: Rajawali Pers, 2014), hlm 13.

- 11) Meita Djohan Oe, Isbat Nikah dalam Hukum Islam dan Perundang-undangan di Indonesia, hlm 139.
- 12) Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, hlm 221.
- 13) Lihat Keputusan Mahkamah Agung RI Nomor KMA/032/SK/2006 tentang Pedoman Pelaksanaan Tugas dan Administrasi Pengadilan
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- 15) Yusna Zaidah, *Isbat Nikah dalam Perspektif Kompilasi Hukum Islam dan Hubungannya dengan Kewenangan Peradilan Agama*, hlm 6.
- 16) Wawancara dengan Hakim Pengadilan Agama Garut Dr. Kamaludin, M.H. pada tanggal 24 Agustus 2021
- 17) Hasil Wawancara dengan Ibu Aisah pada tanggal 24 Agustus 2021
- 18) Australian AIS, Studi Dasar AIPJ Tentang Identitas Hukum Jutaan Orang Tanpa Identitas Hukum di Indonesia, hlm 74.
- 19) Gun-gun Gunawan, S.H., Panitera Pengganti Pengadilan Agama Garut, wawancara pribadi, Garut 24 Agustus 2021
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